

GENERAL TERMS AND CONDITIONS OF PURCHASE

01.04.2013

Applicability

These terms and conditions only apply to merchants, public bodies and public separate estates (*juristische Personen des öffentlichen Rechts und öffentlich-rechtliche Sondervermögen*).

1. Conclusion of contracts

- 1.1 We place our orders exclusively on the basis of our general terms and conditions of purchase ("GTPs"). Any other terms and conditions will not become part of the contract, even if we do not reject them expressly. If we accept supplies or services without objecting expressly, this may not under any circumstances be taken to mean we accepted the contractor's terms and conditions of supply. These GTPs also apply to any and all future contractual relations with the contractor.
- 1.2 No orders, agreements or amendments are binding unless we issue or confirm them in writing. Should any orders or agreements be made orally or by telephone, we must confirm them in writing subsequently for them to be binding, as must any oral ancillary agreements or amendments to the contract. Correspondence must be addressed to our purchasing department only. Any agreements made with other departments, whereby agreements are made or any agreements are amended must be confirmed expressly in writing by the purchase department by way of an amendment to the contract.
- 1.3 We do not recognise any order confirmations that vary from our order, even if we do not reject them in writing. The contractor must return a copy of our order as confirmation of order duly signed with binding effect within ten working days should we so require, failing which we may cancel the order. Should we not respond to any proposals, demands or proofs by the contractor, this may not be taken under any circumstances as consent. If business is concluded informally, our written order will be deemed to be a commercial letter of confirmation. Any agreements with other departments which involve amending agreements must be confirmed expressly in writing by the ordering purchasing department as an amendment to the contract.
- 1.4 We may demand that changes be made to the goods to be supplied and/or the delivery dates also after the conclusion of the contract where this is reasonable for the contractor. If contracts shall be amended accordingly, the effects on both sides must be taken reasonably into account, particularly in terms of additional or reduced costs and with regard to the delivery dates.
- 1.5 If the contractor realises or should realise as an expert in its field that an order is incomplete, or that the purpose of the order cannot be achieved by this delivery, it must inform us accordingly without undue delay and in detail.

2. Prices, dispatch, packaging, transfer of risk and title

- 2.1 Prices are fixed once agreed, and include the costs of packaging, freight and transport to our specified delivery address and/or point of use.
- 2.2 Dispatch is at the contractor's risk. The risk of all kinds of deterioration, including loss by accident, remains with the contractor until delivery to our specified delivery address and/or point of use.
- 2.3 Title to products supplied passes to us when they are paid for. We do not accept any extended or prolonged retention of title on the contractor's part.
- 2.4 The contractor agrees to take back packaging materials included in its deliveries or dispose of them at its own expense at intervals of time to be agreed with us. Packaging is not chargeable.

3. Invoicing, payment and payment terms

- 3.1 Invoices must be issued in duplicate, quoting our order data (SAP order no., order item, date ordered and EDP-reference no. for the product ordered) once supplies or services have been made, and sent separately to our accounts payable department. Payment terms start to run from the day of receipt of the invoice. Any invoices not submitted in due form will only be deemed to have reached us by the time they are corrected.
- 3.2 Payment will be made within 60 days net cash unless agreed otherwise, calculated from the day of supply or of rendering of the service and receipt of invoice, provided we have no complaints in respect of supplies or services.
- 3.3 If we settle an invoice, this may not be taken to mean that we waive our right to complain and to give notice of any defects in respect of the products invoiced.
- 3.4 We may set off amounts due to the contractor against any amounts due to our affiliated companies. The contractor may not set off its own claims unless its counterclaims are legally established, are undisputed or are acknowledged by us. It may not exercise any right of retention unless its counterclaim is based on the same contractual relationship.
- 3.5 Should material test certificates be agreed, they form an integral part of the delivery and must be submitted to us along with invoices.
- 3.6 Where charged by weight, the weight determined by us is binding and final, unless the goods delivered were weighed officially at the place of dispatch.
- 3.7 The contractor may not, without our prior consent in writing (which we will not refuse unreasonably) assign its claims against us to any third parties or engage any third parties to collect them. If the contractor for its own part is supplied subject to extended reservation of title (*verlängerter Eigentumsvorbehalt*), our consent for the purposes of the preceding clause is deemed to be given. Should the contractor in violation of clause 1 hereof, assign its claims to a third party without our consent, that assignment will be binding nonetheless, although we may pay, in our own election, the contractor or the third party with exonerating effect.

4. Items provided by us

- 4.1 The contractor is liable to us should any items we provide to it be lost or damaged. The contractor shall inform us without undue delay should any of such items be impaired in law or fact.
- 4.2 All processing of materials provided to the contractor by us shall be performed for us. All such materials remain our property while being worked and processed. The parties agree that we shall acquire co-ownership in the products made using materials or components provided by us in proportion of the value of the items supplied by us to the total value of the product. The same applies should we lose title by way of mixing or mingling.

5. Delivery dates, delay in delivery, force majeure

- 5.1 All delivery dates stated in our orders are bindingly agreed. Should we not have specified delivery dates in our order, the delivery dates stated by the contractor are agreed to be binding. Whether delivery dates or deadlines are met depends on when goods reach our designated place of use and/or if they are accepted in time.
- 5.2 Should the contractor realise that it cannot meet the agreed delivery dates, it must notify us accordingly without undue delay in writing, stating the reasons and how long the delay is likely to last.
- 5.3 If we accept supplies or services which are late, this does not amount to waiving the right to claim damages.
- 5.4 Should the contractor be unable to meet agreed deadlines for reasons it is responsible for, we may, after expiration of a reasonable period of grace set by us, demand damages instead of delivery or procure substitute goods from third parties at the contractor's expense and/or rescind the contract. Should deliveries be delayed repeatedly, and we issue a prior warning letter in writing, we may also revoke any or all orders not performed at that time with immediate effect.
- 5.5 Circumstances of force majeure, labour disputes, official action and other unforeseeable, unavoidable and serious events will release the contracting parties from their obligations for as long as those disturbances last and to the extent of their effects. The contracting parties will be bound insofar as reasonable to provide the information required without undue delay and modify their obligations to suit the changed circumstances in good faith.
- 5.6 Deliveries will only be deemed to be made in time if accompanied by the certificate as agreed.

6. Warranties

- 6.1 The contractor warrants and assures (*Zusicherung*) that all supplies and services it provides are state of the art, comply with relevant legal requirements and instructions and guidelines of the competent authorities, mutual indemnity associations and professional associations, and meet the functions and specifications required. The contractor also warrants and assures to comply with all the data and quality standards as stated in our drawings and/or supply specifications. Should these specifications have to be varied in exceptional cases, the contractor must obtain our prior consent to this in writing. This consent does not affect the contractor's warranty and guarantee obligations. Should the contractor have any concerns as to our desired manner of performance, it must inform us in writing without undue delay.
- 6.2 The contractor shall remedy any defects in supplies or services notified to it by us during the warranty/guarantee period, which includes failing to meet guaranteed data and the absence of warranted specifications and quantities, on our request without undue delay and free of charge. This includes all ancillary costs, repair or replacement of defective components, which is at our election, without prejudice to any further or other claims in law, and, more particularly, the right to rescind, demand a reduction of the price and/or damages.
- 6.3 Should the contractor fail to meet its guarantee or warranty obligations within a reasonable respite

set by us, due to fault on its part, we may have the measures required carried out, by ourselves or by third parties, at the contractor's risk and expense, without prejudice to its warranty or guarantee obligations. In urgent cases, we may remedy defects ourselves, or engage a third party to do so at the contractor's expense, having consulted the contractor. Where required to avoid disturbing production or if there is a risk of exceptionally high losses, we may remedy minor defects ourselves without consulting the contractor beforehand and without prejudice to the contractor's guarantee or warranty obligations.

- 6.4 Unless expressly agreed otherwise, the guarantee/warranty period is 60 months, starting from the time when goods supplied are delivered to us or to our designated third party at our designated delivery address or point of use. With regard to devices, machinery and equipment, the warranty period starts to run on the date they are accepted, as stated in our purchasing department's written declaration of acceptance. The guarantee/warranty period for spare parts is 60 months from when supplied. Where items supplied cannot remain in use while defects are being investigated and/or remedied, the current guarantee/warranty period will be extended by as long as that downtime lasts. For parts repaired or replaced, the guarantee/warranty period starts to run anew, beyond the statutory limitation period.
- 6.5 The contractor will indemnify us against any and all claims, on whatever grounds in law, which third parties may bring against us based on defects in fact or law or any other fault in a product the contractor supplies, and will reimburse our necessary costs incurred in asserting our rights. The contractor shall also be liable to us for our losses caused by defects in the product. These losses also include the costs of any precautionary recall campaign insofar as this is reasonable in our customers' interests or to protect third parties.
- 6.6 The contractor will mark the goods supplied such that they can be recognised permanently as its products. The contractor must effect suitable quality assurance to the state of the art suited to the nature and scope concerned, and furnish us with proof of this on demand, and will conclude a quality assurance agreement with us to that effect upon our request. The contractor will also insure itself against all product liability risks with sufficient cover and furnish proof of that insurance to us on demand.
- 6.7 The contractor may not alter the goods once contracts are signed or during the delivery period, even the most minor changes, and even if our specifications, dimensions, analyses, formulae, production methods etc. as prescribed and/or agreed with the contractor in each case remain unchanged. No such variations may be made until we have given our consent in writing. Should the contractor fail to meet these obligations through fault on its part, it will be liable for all our costs and those of third parties incurred in examinations, obtaining expert opinions, additional calculations, reprocessing, replacement supplies etc.
7. **Duty to examine and complain, examination costs**
We are only bound to check incoming goods for externally apparent defects and externally apparent deviations of identity and quantity, and will notify such defects to you without undue delay, and in any case within eight days of delivery. We reserve the right to examine goods received in more detail. Moreover, we will notify defects to you within the ordinary course of business after they are noticed. In that respect, the contractor agrees to waive its right to object that such notifications are not in time.

8. Intellectual Property

- 8.1 The contractor warrants that all goods supplied are free of intellectual property rights of third parties and, in particular, that neither the supplies or services and/or using the goods supplied infringe any patents or other third party intellectual property rights.
- 8.2 The contractor will indemnify us and our customers against claims by third parties for any breaches of intellectual property rights and will bear any and all costs we incur on this account upon first demand.
- 8.3 We are entitled to acquire the rights of use for the relevant goods or services from the third parties at the contractor's costs.

9. Proof of origin, export control

- 9.1 Unless explicitly agreed otherwise, all orders are exclusively for goods which are products of origin under the European Community's preferential agreements. The contractor must furnish us with sufficient proof of preference (long-term or individual shipment declarations with details of origin, declaration of origin on the EUR-MED invoice, EUR-MED product marketing certificate, Form A) upon delivery at the latest, and will also be bound to provide the details of origin as stated above upon request by presenting information sheets INF 4 confirmed by its competent customs office. Where such proof uses general details of origin, e.g. 'European Community', the country of origin (e.g. 'The Netherlands') must also be declared.
- 9.2 Should the contractor vary from its declaration while a long-term supplier's declaration is in force, it agrees to notify the changes, in addition to the references on its invoice, also by way of informing our customs/foreign trade department in writing (double obligation to report). We would point out here that suppliers' declarations which include exclusion clauses are not longer allowed since June 30th, 2004, and we do not accept them, because they are not covered by Regulation 1207/2001. For the present purposes, 'exclusion clauses' means any addition to the prescribed wording of the supplier's declaration which limits the force of the declaration by referring to subsequent individual documents (delivery notes, invoices etc.) and any designations they may contain or not contain.
- 9.3 No goods may be supplied which are not products of origin under any preferential treaty of the European Community without our prior consent in writing.
- 9.4 Over and above the alternative obligations under paras. 9.1 and 9.3, the contractor is also obliged to produce certificates for all goods to be supplied (certificates of origin, long-term and individual supplier's declarations without details of origin, additions to the declaration of origin on invoices) showing that the goods are of non-preferential origin. Where this proof gives general details of origin, such as 'European Community', the national origin, such as 'Kingdom of the Netherlands (European Community)' must also be given.
- 9.5 All proof of origin must be submitted automatically at the contractor's expense, upon delivery at the latest.
- 9.6 The contractor agrees to inform us expressly in writing under separate cover and in relevant business documents when entering into the contract about any consents required under the German foreign trade law (AWG), the weapons of war control law (KrV/WaffKontrG) or the enacting law to the chemical weapons convention (CWÜAG). It must also inform us, stating specific list positions, whether goods appear in the EC dual-use regulation with schedules I to IV (EC Regulation 1334/2000) or in the export list Part I, sections A and C of the foreign trade regulations (AWV). It must indicate whether goods or parts thereof (stating the percentage of value of the goods to be supplied) come under the US Commerce Control List CCL (stating the specific Export Control Classification Number ECCN) or the US Export Administration Regulations EAR (classification EAR99). Relevant business documents include in particular contracts for sale, confirmations of orders, delivery notes, packing lists, pro forma invoices, invoices and notices of dispatch.
- 9.7 We would point out, expressly, that we reserve the right to claim damages from the contractor in civil law should the provisions of paras. 9.1 to 9.6 as an integral part of our purchase contract not be met comprehensively. The contractor shall be liable in particular for all losses caused by failing to submit proofs of origin in time or at all or by false statements made in those documents.

10. Miscellaneous

- 10.1 The contractor warrants that it will treat any and all commercial and technical details that are not in the public domain which become known to it through business dealings strictly confidential and that it will not disclose them to any third parties, and that it will bind its subcontractors accordingly.
- 10.2 Unless agreed otherwise expressly, the place of performance for all delivery obligations is our designated address for shipment and/or point of use, and, for all other obligations of both parties, the registered offices of our company.
- 10.3 Venue is Troisdorf.
- 10.4 German law applies exclusively, excluding the UN Convention on the International Sale of Goods of 11.04.1980 (EKG and EKAG).

11. Energy Management

We will improve our performance with regard to energy efficiency significantly by introducing and maintaining an energy management system. Consequently, incoming proposals will be evaluated partly on the basis of energy-related values.